

Mediator Excellence Council
July 24, 2007
9:30 a.m. – 12:00 p.m.
Meeting Summary

Present: Ramona Buck, MACRO; Lou Gieszl, MACRO; Rob Ketcham for Nancy Hirshman, MCDR; Cheryl Jamison, Staff to the MEC; Jonathan Rosenthal, Vice Chair of the MEC & District Court; Tara Taylor, Chair of the MEC & Roster Managers, Toby Treem Guerin, Mentoring Task Group; Rachel Wohl, MACRO; Participating by phone: Craig Brieske, MD ACR and Mae Whitehead, Consumer Awareness Task Group.

1. Next Meeting:

Thursday, August 23, 1:30 p.m. – 4:00 p.m. at MACRO. Lunch will be provided. Phone participation will also be arranged.

2. MEC Retreat – Possible Dates – Friday, November 2 or November 9

Tara discussed having a one day retreat for MEC members to give the Council an opportunity to fully discuss some policy issues without the 2.5 hour time restraint.

3. MPME Members Recruiting

As we approach the end of the first year of membership in the MPME, we want to focus on increasing the membership. Tara encouraged all council members to join her in making a personal commitment to recruit members. Cheryl mentioned that there are individuals working hard on MPME Task Groups who have not completed the membership process. Something we want to change as quickly as possible.

Jonathan indicated that District the application for District Court volunteers now contains the following language:

The District Court of Maryland ADR Office **requires** all roster mediators to become a member of the Maryland Program for Mediator Excellence (MPME) **and to adhere** to all membership requirements of the MPME. *There is no cost associated with joining the MPME. If you have concerns about joining the MPME, please indicate your concerns below and we will take them into consideration.*

_____ (Please initial) I agree to become a member of the MPME and adhere to the membership requirements of the MPME. *(Required)*

_____ (Please initial) I am not joining the MPME at this time. My concerns are:

Cheryl also mentioned that MACRO will be doing a mailing to individuals from their mailing list which will include the new consumers guide and an MPME application. Mediators, who are not members, will be encouraged to join. Non mediators and current MPME members will be encouraged to pass it along to those who might be interested.

4. 60 second commercial from the Mentoring Task Group

Toby gave a short update on the work of the Mentoring Task Group telling the Council that the Task Group was putting together a pilot for private practitioners to participate in the MPME Skills Based Mentoring Program. This was a request that the MEC made when giving the go ahead to implement the program. Toby indicated that several private practitioners had expressed an interest in participating in the program.

In addition to informing the MEC, Toby also asked if any MEC member were willing to be a mentor in the private practitioner pilot to please contact her. This is not a voluntary participation as mentors can charge a fee. She also asked if they should be approached by individuals wanted to be mentored, if they would consider either doing it as part of the program or referring that individual to Toby. One of the challenges of the private practitioner pilot is identifying learning partners. Rob Ketcham agreed to participate as a private practitioner.

5. 60 second commercial for the MPME Members Meeting

Cheryl reminded the MEC about the upcoming MPME Members meeting. The following fact sheet was provided. Cheryl indicated that to allow members to attend without having to take off work, the time for the meetings will 5:30 p.m. – 8:30 p.m. so members do not have to take off work. She encouraged MEC members to look at their schedule and see which meetings they can attend.

MPME Member Meetings Fact Sheet

Purpose:

- To update current members on the process of the MPME
- To recruit new members
- To provide an opportunity for mediation programs in each location to provide information on their program and recruit members
- Provide 2 hours ethics workshop

The Program:

The meeting will last for three (3) hours with the ethics portion lasting for two (2) hours. Through the use of role-plays, participants will discuss ethical questions or situations, proposing solutions based on the MPME Standards of Conduct for Mediators. Refreshments will be provided appropriate to the time of the meeting.

Tentative dates and locations are as follows:

Members will be able to attend any of the workshops.

Wednesday, Oct 3 – Baltimore County

Thursday, Oct 4 – Germantown

Wednesday Oct 10 – Frostburg

Wednesday, Oct 17 – Annapolis

Wednesday, Oct 31 – LaPlata
Tuesday, Nov 6 – Talbolt or Queen Anne
Wednesday, Nov 14 - Salisbury

Member Participation:

MPME Members have been asked to volunteers to share the facilitation duties, serve as role-players as well as writers to help develop role-plays.

End of fact sheet

3. SJI Assessment Grant Application

The rest of the meeting was spent discussion an grant application that MACRO is making to the State Judicial Institute, a federal agency which makes grants available for projects benefiting the courts. The draft that was distributed to MC Members prior to the meeting is included at the end of the document.

Rachel explained that Kathy Schwartz (the Administrative Office of the Courts grants person) set-up a meeting at MACRO with Janice Munsterman, the Director of the State Justice Institute, a federal agency which gives grants to programs benefiting courts. Rachel and Lou described MACRO's work and two major projects to her, which MACRO has been working on collaboratively for several years. One project is the Court ADR Program Self-Assessment Project (CAPSAP) and the other is the Maryland Mediator Assessment Pilot (MAP). Janice was very very interested in both projects. As a result, MACRO is submitting two grant proposals to SJI for matching money (\$300,000 match for each project over 3 years).

Rachel said that MAP would provide a process to assess mediators and improve their skills. It may lead to MPME being able to certify mediators. The Assessment & Certification Task Group has been looking at possible pilots. There was considerable discussion about the feasibility of using the model provided by the Maryland Council for Dispute Resolution (MCDR), including the assessment tool developed by Family Mediation Canada, for all mediation frameworks. After a great deal of discussion, it seems that individual tools will be needed for the four (4) major approaches in Maryland; community, eclectic, facilitative, and transformative.

Cheryl then took the Council members through the objectives and pilot design phases of the grant application. This was discussed with the Assessment and Certification Task Group at their meeting on July 19. Changes were made to the application as a result of that discussion. What was presented to the MEC included those changes. She explained that in addition to having many parts (after all it is a federal grant) the grant application has a page limit, so she had to condense a lot of the information, which makes this some what challenging. The other challenge is to write the grant in terms broad enough to provide the most flexibility while giving SJI enough information.

Basically, the pilot will work to develop assessment tools, which respect each approach, to be used in two performance-based assessments. It is hoped that core skills needed by all approaches can be identified and incorporated into each tool. The rest of the tool would focus on those skills as they are used in that particular approach. Assessors would go through assessor training to learn how to use the tool and mediators would have an orientation to make sure they understand the assessment process. For the first assessment, two (2) trained assessors watch the mediator conduct a role-played mediation. The mediator receives feedback from the role players and the assessors. The mediation and the feedback sessions are all videotaped. The assessors provide written feedback to the mediators. Next the mediator, with the assistance of one of the assessors, develops a skills improvement which is implemented between the first and second assessment. The mediator then sits for a second similar performance-based assessment designed to measure whether the mediator has improved.

Before Lou facilitated a discussion about the project, Cheryl pointed out that are a lot of questions which have not been answered and would not be answered until the pilot was underway. She said that there will be a Project Management Team which will help MACRO collaboratively manage the pilot. The Project Management Team will include a representative from each of the mediation frameworks, Rachel, MACRO's Grant & Budget Director, a researcher (to be hired), Jonathan Rosenthal for the District Court, a Circuit Court Representative, and a member of the MEC. Cheryl will be the project manager. **The MEC will need to determine if their representative is the chair of the Assessment & Certification Task Group or some one else from the MEC.**

This is the portions of the SJJ grant application which was discussed. A summary of the discussion follows:

Maryland Mediator Assessment Pilot (MAP)

Project Objectives

The Maryland Mediator Assessment Pilot (MAP) has as its overall objective to design, test and implement a statewide process for Maryland mediators which combines a dual assessment process with the development of a self-improvement plan and which could lead to certification. Currently, in Maryland there is no statewide certification or licensing requirement for individuals to serve as mediators in the courts, in other government agencies providing mediation services, in community mediation centers, in the schools or elsewhere. Generally, completion of a forty (40) hour basic mediation course, which includes only role plays and no opportunity for the individual

to even observe a real mediation let alone participate in one, is all an individual needs to get on the roster of district and circuit court mediation programs or most other mediation programs in Maryland and start mediating. It is true that most programs offer skills based continuing training to their mediators but without some means of assessing the skills of the mediator on a regular bases, there is no way to determine the quality of the mediation service being offered.

The good news is that mediation is flourishing in Maryland and is beginning to make its way into the consciousness of consumers. District Courts offer mediation services both before trial by referring cases to community mediation centers and on the day of trial with mediations taking place at the court house. Many jurisdictions offer mediation for their civil cases including contracts, personal injury, employment, environmental, workers' compensation and real property cases to name a few. In cases dealing with family issues, all jurisdictions have court ordered mediation for child custody and/or visitation casing using a roster of mediators who are paid by the parties. Some jurisdictions offer mediation in martial property cases and some in cases dealing with children who are being reunited with their families after being removed from the home or in cases where the issue is the relationship between an adopted child and their birth parents and adoptive parents. As mediation continues to grow and develop, it is essential that a means of evaluating the quality of the mediation service being provided is available. This is especially true in court ordered mediation programs in which the court is requiring parties not only to use mediation but to pay for the services. The Maryland Mediator Assessment Pilot will address this critical need.

Successful completion of MAP will provide mediators with the opportunity to complete a performance based assessment as a regular part of their continuing improvement program. There is also the potential that the work done by the mediator during this process could result in

certification as data from the two assessments will be used to establish the minimum score needed for certification. Mediators who participate in MAP will conduct a mediation role play in front of two trained assessors. At the conclusion, the role players, while still in their roles, will provide feedback to the mediator. The role players will be excused and the mediator will receive feedback from the assessors. The mediation role play and the feedback sessions are all captured on tape and will be provided to the mediator along with a written assessment completed by the assessors. Based on the role play and the feedback, the mediator will meet with the assessors to develop a self-improvement plan. After an interval of time, in eight (8) months in MAP, the process will be repeated. This program will be invaluable to both the mediator and the program(s) for which they mediate in providing a picture of the quality of their mediation service.

In accomplishing the overall objective, the following interim objectives are also incorporated:

1. Development of an assessment tool for the four (4) major mediation approaches in Maryland: community mediation, eclectic/evaluative, facilitative and transformative;
2. Establishment of a minimum score needed for certification;
3. The final assessment tool developed for each approach will have:
 - *Inter-Rater Reliability* which will minimize the element of subjectivity so that several assessors would come up with consistent evaluations of the same candidate using measures that reflect the particular mediation model that the candidate professes to follow.
 - *Validity* so that each assessment tool measures what it purports to measure.
4. The assessment process will be developed with the following attributes:

- *Transparency* so that participants and other interested parties will be able to access information that explains clearly why we have the assessment program, what it entails, how it was developed and how the data will be used.
- *Freedom from Conflict of Interest* so that the assessors do not have an interest in the outcome of the assessment for any individual. Assessors cannot perceive the mediator as potential trainee or competitor.
- *Respect for Different Approaches* would be addressed by providing that both the assessor and the mediator mediate from the same framework.
- *Skill Building* will be achieved because mediators will benefit by participating in a process that examines their current skills and provides a plan for improvement.
- *Transferability* so that the process can be replicated in all venues in Maryland as well as in other states.

Tasks and Methods

Phase 1 - Designing the Assessment Tools (6 Months)

In the first phase of MAP an assessment tool for the four (4) major mediation frameworks in Maryland, community, eclectic/evaluative, facilitative and transformative, will be designed. To accomplish this phase, experienced Maryland mediators will form the nucleus of a working group for each of the mediation frameworks. Nationally recognized practitioners will also be consulted throughout the design phase as will managers of court and other mediation programs in Maryland. The working groups will be supplemented with a researcher and an individual skilled in the development of evaluation tools, as the need arises. In developing the tools, whenever possible, the groups will work to identify commonalities between the frameworks which can be measured in the same way.

The assessment tool developed by Family Mediation Canada, and used by the Maryland Council on Dispute Resolution (MCDR), will be the starting point for the Facilitative Work Group. The Institute for the Study of Conflict Transformation also has an assessment tool used by mediators operating in the transformative framework. Both tools will be examined to determine if modifications are needed to meet this pilot's objectives, and if so, how can those modifications best be accomplished. Currently, there is no assessment tool for the community mediation framework, although various self-assessment tools exist and will be used as a starting point for the development of that tool. Development of an assessment tool for the eclectic/evaluation framework will take the most work since we are not aware of an assessment tool that might already exist. The American Bar Association's Dispute Resolution Section has been looking at the issue of mediator quality in the eclectic/evaluative framework and their work will form the foundation for the work of this group. Understanding that the working groups are not starting in the same place, the timeframe to complete this phase will vary, however, it is estimated that all four assessments tools will be completed within six (6) months.

Once the assessment tools are developed, a final pre-test will be conducted. While it is anticipated that testing will be conducted throughout the design phase, the opportunity to conduct a final pre-test is being included for each of the tools. The exact process to be used in conducting the pre-test will be determined in conjunction with the project researcher and evaluator and may have some variations depending on the mediation framework. At the conclusion of the pre-test, the working groups will review the results to determine to what extent any further modifications are needed prior to implementing the first assessments. Once modifications are made, assessors will be trained on how to use the tool.

Phase 2 - Assessor Training (6 months)

The success of MAP depends on the development of the appropriate assessment tool and the ability of the assessors using the tool. It will be vitally important that assessors understand how to use the tool, how to recognize the quality of the skills being demonstrated and how to give feedback in a manner that is beneficial to the mediator participating in the assessment. The training of the assessors is a critical stage of MAP. The Maryland Council on Dispute Resolution (MDCR) has already developed a two-day training for assessors as a part of their Performance -Based Certification Program. Part of that training involved the development of tapes designed to show the assessors in training how to spot mediation skills in need of improvement. The experience gained by MDCR in developing their assessors training will be used to develop assessor training for the other frameworks.

In addition to being trained on how to use the tools, assessors will receive training on the protocols to be used when assisting the mediators in developing their individual Self-Improvement Plan as outlined in Phase 6, Learning and Self-Improvement. At the conclusion of the training, all participants will complete an evaluation of the training. The results of the assessor training evaluations will be compiled and reviewed by the Project Management Team, the working groups for each mediation framework and managers of court and other mediation programs.

Phase 3 – The First Assessment (5 months)

In this phase, approximately fifty (50) mediators from each of the frameworks will be selected to participate in the assessment pilot, for a total of 200 mediators. This number may

change on the advice of the researcher to be hired to assist with the project. The general steps of the assessment were outlined in the Project Objectives. Mediators will complete a self-assessment statement which will include the framework to be assessed and his/her philosophy of mediation. Based on the self-assessment statement, the mediator will be assigned to the appropriate mediation framework. Mediators will conduct a mediation role play in front of two trained assessors. At the conclusion, the role players, while still in their roles, will provide feedback to the mediator. The role players will be excused and the mediator will receive feedback from the assessors. The assessors will review their notes and complete the assessment tool. This may take place on the day of the assessment or shortly thereafter.

Because one of the goals of MPA is to replicate it in Maryland and elsewhere, it is important that the process be cost effective. Conducting all the assessments in person is a very labor intensive and expensive method. To address this concern, the video tapes of the mediation will be assessed by a pair of assessors who did not assess the mediator. The scores will be compared to see if there is a statistically significant difference between viewing the mediation in person versus using a tape. The hope is that there will be no appreciable difference and video taped mediations could be used. If this is found to be the case, as part of determining next steps, adjustment to the way in which feedback is done will be changed to reflect the use of video tapes.

Each group (the mediators, the role players and the assessors) will complete an evaluation covering the overall assessment process before leaving. The assessors will also have a meeting with the working group for each framework to discuss the tool and the process, noting areas where modifications may be needed. This may take place on the day of the assessment or shortly thereafter. In order to have a complete discussion, it may be necessary for the working group to

review portions of the video taped mediations prior to returning the tape to the mediator. Data necessary for MAP will be captured from the assessment tool and from the evaluations. The data will be reviewed by the Project Management Team and other appropriate parties.

Phase 4 – Learning & Self-Improvement (8 Months)

In addition to being an assessment process, MAP is also a learning tool for mediators. It provides mediators with an invaluable opportunity not only to get feedback on their mediation skills but to develop a plan for improvement in consultation with an experienced mediator. This is the learning and self-improvement aspect of the program. After the first assessment, the mediator will receive a copy of the video taped mediation, the assessment tool and the written comments from the assessors. The mediator will meet with one of the assessors to go over the video and to get assistance in developing an improvement plan to be implemented during the eight (8) months between the first and second assessments.

While concrete suggestions will be made, this is a self-directed improvement plan and mediators will be encouraged to use all available learning and training opportunities. They may choose, for example, to take a training focused on the area(s) they are working on, or they might seek mentoring, or they might simply focus on the area(s) in question when they mediate. Also during this time, the Project Management Team and/or the working groups may develop and host training sessions on topics identified as challenging for many of the mediators.

Phase 5 – Second Assessment (5 months)

The assessment process will be repeated following the same protocols as the first assessments, with one change. In each case, the mediator will be assessed by the pair of previous assessors, and an additional assessor or two who did not initially assess that mediator. The

reason for this change is to test the inter-rater reliability, that is, to test if different assessors come up with consistent evaluations of the same candidate.

Phase 6 – Final Report & Dissemination (6 months)

The final phase of MPA will be spent conducting the statistical analyses and reviewing the evaluations completed during the course of the project. A primary focus of this phase will be to determine the steps necessary to widen the scope of MAP in two important ways: (1) to include all mediators in the state and (2) how to proceed to certification. One of the challenges of a certification program is deciding on the minimum score necessary to be certified. The results of MAP will be used to set the baseline. It is conceivable that a high enough score in MPA could earn a mediator certification. During this phase how this pilot can be replicated in other jurisdictions will also be studied. A final report will be written and disseminated based on the plan outlined in Section F(1), the Dissemination Plan, page 18.

End of application

Possible Changes to the Application

- There are a couple of places in the application where it sounds as if certification is definite. Make the language more tentative.
- Would like to see more details on the self-improvement phase
- During the 1st assessment, the application states that “the mediator will develop a self-assessment statement which will include the framework to be assessed and his/her philosophy of mediation. Based on the self-assessment statement, the mediator will be assigned to the appropriate mediation framework.” Does that mean someone other than the mediator will decide what mediation framework the mediator is assessed in?
 - No, the mediator will indicate, in the self-statement, which framework they want to be assessed and they will be placed in that group. May need to use another word.
- Might want to include more information at the end in Phase 6 about how the information collected will relate to the court, given SJJ’s interest in the court.

- Under objectives add affordability and the value of the data collected during the pilot. Increased consumer confidence in mediation could also be added.
- Under the objectives might be good to include some of the questions we are trying to answer with the pilot.
- Say more about the value of the self-awareness phase
- Include information about the mediator orientation which will be developed utilizing the latest technology.
- Include a statement indicating that the pilot will provide information that could result in the development of new skills training courses and new branches on the MPME tree

Areas that need to be discussed/considered during the pilot:

- This is an expensive pilot, what is the cost going to be to maintain this program once it goes statewide? We will need to charge a fee and how will that fee be decided?
 - At some point a fee may be necessary along with a scholarship fund.
- When considering the role plays, it will be necessary to consider the context in which the mediation is taking place. For example, often times district court mediators will say they mediate differently for the district court than for other places. So the context of the mediation needs to be considered.
- Concern was expressed about certification and giving a score. Would like to develop a system in which, if there was certification, it was not a score that a person receives. People may market the score and then we have set up a system which divides people. Feelings about certification are uncertain.
- Other professions have certification and you don't see people advertising their score, they do advertise that they are certified, which is what we want them to do.
- Perhaps we only tell the individual their score if they do not pass. If you pass, all you will know is that you passed.
- Whether there is a score or pass/fail or some other method of scoring may depend on how the tools are designed.
- What is the length of the role-play? Will each mediator get the same role play or several, will there be co-mediation?
 - Co-mediation will be included. The issue is will the mediators be assessed as individuals or as a team? In the MCDR model, they are

assessed as a team. This is hard to do because often time you have a dominate individual and this does not mean the other mediator is not a competent mediator.

- What happens to the information? Will the information for those in roster programs be shared with the program?
- Will the role players be trained mediators, actors or students?
- Where will the pool of mediators come from? Will we be able to identify 50 mediators in each framework to go through the pilot?
- How does the 2nd assessment measure the elements worked on during the self-improvement phase? It seems possible that a mediator could go through the 1st assessment, identify areas for improvement, work on those areas and in the 2nd assessment not have the opportunity to demonstrate the improved areas. How is this going to be addressed?
- How will mediators and assessors be selected? What kind of registration process will be used?
- A different management approach could be use which would have multi-disciplinary working groups working on issues related to developing a tool. If we go in saying we are going to have four tools, we limit the outcome. But by having issues groups we could develop one tool which could be used by all approaches which would include a set of skills necessary regardless of approach.
- In some way, wish we could put aside the work of MCDR and other preconceived ideas that we might have as to how this is suppose to come out and begin again. This time the goal would be to design a tool with a core set of commonalities, we might be surprised.
- To establish a baseline for certification, we would need to determine the core competencies and how they can be measured.
- Whether we end up with certification is an issue that needs a lot more discussion.
- For the statistician might want to look for a person with a broad background, perhaps in social sciences where they study human subjects.

Cheryl encouraged members to send her their comments, questions or concerns. Items related to the grant application will be reviewed to see if/how they can be incorporated into the application. She will also keep a list of comments, questions and concerns which need to be addressed during the pilot. Comments related to the grant application need to be received by August 15.

Meeting was adjourned at 11:50 a.m.